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Attorneys for Plaintiff
MOUNTAIN SUMMIT FINANCIAL, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MOUNTAIN SUMMIT FINANCIAL, INC.

Plaintiffs,

v.

PANGEA PAYMENT SOLUTIONS and
ZIPMARK, INC.

Defendants.

Case No.:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Mountain Summit Financial, Inc. ("MSF"), by and through counsel, states the following in support of its Complaint against Defendants Pangea Payment Solutions ("Pangea") and Zipmark, Inc. ("Zipmark"):

PARTIES

1. MSF is a tribal lending entity wholly owned by the Habematolel Pomo of Upper Lake ("Tribe"), a federally-recognized sovereign Indian Nation, and created under the laws of the Tribe. MSF's principal place of business is located on the Tribe's land located near Upper Lake, California.

2. On information and belief, Pangea is a Canadian entity with its principal place of business in Ontario, Canada.

27. Pangea breached each of the contracts with the Lenders by failing and continuing to fail to return the funds belonging to the Lenders.

28. As a result, the Lenders have been damaged and continue to be damaged in an amount not less than the \$107,451.68 remaining in the settlement accounts as well as additional damages such as the lost use of the funds.

29. Furthermore, the Lenders' contracts with Pangea provide for an award of attorney fees and expenses to a prevailing party in any legal action enforcing and/or interpreting the contracts.

30. Pangea's conduct violates the contracts and has forced the Lenders to incur attorney fees and expenses through this lawsuit.

WHEREFORE, MSF requests that the Court enter judgment in favor of MSF, award MSF its damages, pre- and post-judgment interest, attorney fees, and costs, and grant such further relief that the Court deems just and proper.

COUNT II
BREACH OF EXPRESS CONTRACT (ZIPMARK)

31. MSF incorporates by reference all other allegations as if fully set forth herein.

32. Each of the Lenders entered into a written contract with Zipmark.

33. The contracts were supported by consideration in that Zipmark agreed to provide services to the Lenders in exchange for the payment of fees to Zipmark by the Lenders.

34. The Lenders complied with all material provisions of the contracts including paying the requisite fees and funding the settlement accounts under the control of Zipmark as required by Zipmark.

35. Zipmark agreed to return the Lenders' respective settlement account funds to the Lenders at the termination each of their relationships.

36. Zipmark breached each of the contracts by failing and continuing to fail to return the funds belonging to the Lenders.

1 WHEREFORE, MSF requests that the Court enter judgment in favor of MSF, award
2 MSF its damages, pre- and post-judgment interest, attorney fees, and costs, and grant such
3 further relief that the Court deems just and proper.

4 **COUNT IV**
5 **BREACH OF IMPLIED COVENANT OF**
6 **GOOD FAITH AND FAIR DEALING (ZIPMARK)**

7 47. MSF incorporates by reference all other allegations as if fully set forth herein.

8 48. Each of the Lenders entered into a written contract with Zipmark.

9 49. The contracts were supported by consideration in that Zipmark agreed to provide
10 services to the Lenders in exchange for the payment of fees to Zipmark by the Lenders.

11 50. The Lenders complied with all material provisions of the contracts including
12 paying the requisite fees and funding the settlement accounts under the control of Zipmark as
13 required by Zipmark.

14 51. The Lenders terminated the contracts with Zipmark, but Zipmark failed and
15 continues to fail to return the Lenders' funds from the settlement accounts.

16 52. Zipmark's unfair retention of the funds breached the contracts' implied covenant
17 of good faith and fair dealing by unfairly interfering with the Lenders' rights under the contracts.

18 53. As a result, the Lenders have been damaged and continue to be damaged in an
19 amount not less than the \$107,451.68 remaining in the settlement accounts as well as additional
20 damages such as the lost use of the funds.

21 WHEREFORE, MSF requests that the Court enter judgment in favor of MSF, award
22 MSF its damages, pre- and post-judgment interest, and costs, and grant such further relief that
23 the Court deems just and proper.

24 **COUNT V**
25 **MONEY HAD AND RECEIVED (PANGEA)**

26 54. MSF incorporates by reference all other allegations as if fully set forth herein.

27 55. Pangea received an amount not less than \$107,451.68 from or on behalf of the
28 Lenders intended to be used for the benefit of the Lenders.

67. Pangea unjustly retained and continues to unjustly retain the Lenders' funds in the settlement account.

68. Pangea has been and continues to be unjustly enriched by refusing to return to the Lenders their respective funds in the settlement accounts.

69. As a result, the Lenders have been damaged and continue to be damaged in an amount not less than the \$107,451.68 remaining in the settlement accounts as well as additional damages such as the lost use of the funds.

WHEREFORE, MSF requests that the Court enter judgment in favor of MSF, award MSF its damages, pre- and post-judgment interest, and costs, and grant such further relief that the Court deems just and proper.

COUNT VIII
UNJUST ENRICHMENT (ZIPMARK)

70. MSF incorporates by reference all other allegations as if fully set forth herein.

71. The Lenders provided a benefit to Zipmark by utilizing Zipmark's services, paying Zipmark's fees, and maintaining the settlement accounts with Zipmark.

72. The Lenders ceased utilizing Zipmark's services and notified Zipmark that the Lenders would no longer be utilizing Zipmark's services.

73. Zipmark unjustly retained and continues to unjustly retain the Lenders' funds in the settlement accounts.

74. Zipmark has been and continues to be unjustly enriched by refusing to return to the Lenders their respective funds in the settlement accounts.

75. As a result, the Lenders have been damaged and continue to be damaged in an amount not less than the \$107,451.68 remaining in the settlement accounts as well as additional damages such as the lost use of the funds.

WHEREFORE, MSF requests that the Court enter judgment in favor of MSF, award MSF its damages, pre- and post-judgment interest, and costs, and grant such further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

MSF demands a trial by jury on all issues so triable.

Dated: February 25, 2019

BUSBY ZAPPALA & SANCHEZ LLP

By: /s/ Ralph A. Zappala
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ERIN S. SANCHEZ
Attorneys for Plaintiff
MOUNTAIN SUMMIT FINANCIAL, INC.